



Manufactured Housing Institute

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September 27, 1996

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M. Street, N.W.
Room 222
Washington, D.C. 20554

Supplemental Comments

Re: Comments relative to paragraphs 59 to 65 of the Report and Order, Memorandum Opinion and Further Notice of Proposed Rulemaking adopted August 5, 1996 - CS Docket No. 96-83

Dear Mr. Canton:

Below are additional comments on behalf of the manufactured housing community industry in response to the FCC's Further Notice of Proposed Rulemaking with respect to Section 207 of the Telecommunications Act of 1996. These comments supplement previous comments by our organization dated September 25, 1996.

Paragraph 65 of the Report and Order expressly requests comment on the application of *Loretto v. Teleprompter Manhattan CA TV Corp.* to the proposed prohibitions as applied to rental properties. The FCC by its proposed rule injects itself into a stream of ongoing litigation that seeks to define the scope of inverse condemnation, or unconstitutional takings, in violation of the Fifth Amendment. This is a matter not resolved exclusively by reference to *Loretto*. Indeed *Loretto* is distinguished by the fact that property rights were taken from the landlord and given permanently to a third party. However, after *Loretto* the Court in *First English Evangelical Lutheran Church v. Los Angeles County* (1987) 482 US 304 held that a landowner may bring a suit in inverse condemnation based upon a temporary taking of all use of his property. Soon thereafter the Court in *Nollen v. California Coastal Commission* (1987) 483 US 825 held a regulation to constitute a taking though it did not deprive the complainant of all use of his property. And more recently in *Dolan v. City of Tigard* (1994) 129 L. Ed. 2nd - 304, 114 S. CT. 2309, 512 US ____, the Court found a taking where regulators could not show a "reasonable relationship" between their demands and the burdens imposed, although they did not deprive the complainant of all economically beneficial use of her property.

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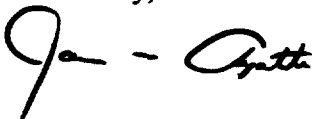
The manufactured home land-lease community industry, most particularly in California and New Jersey, continues in state and federal courts to defend its Fifth and Fourteenth Amendment property rights against unnecessarily intrusive regulation by all levels of government. Yet the industry does not seek to deny its tenants access to video programming services available to the viewing public at large. The FCC can achieve its desired objective without injecting itself into the takings debate by further amending subsection (b) of the rule as proposed on pages 4 - 6 of the Report and Order, renumbering (b)(3) as (b)(4) and inserting a new (b)(3), providing that:

"(b) Any restriction otherwise prohibited by paragraph (a) is permitted if:

- (1)
- (2)
- (3) it is necessary to accomplish a clearly defined architectural or aesthetic objective designed to protect the structural integrity, aesthetic harmony or valuation of a multi unit residential property if the restriction is either stated in the text, preamble or legislative history of the restriction or described as applying to that restriction in a document that is readily available to antenna users, and would be applied to the extent practicable in a nondiscriminatory manner to other appurtenances, devices, or fixtures that are comparable in size, weight and appearance to these antennas and to which local regulation would normally apply; and
- (4) it is no more burdensome to affected antenna users than is necessary to achieve the objectives described above."

Reasonable bylaws, covenants, rules and regulations are necessary and mutually accepted instruments among residents and property owners to protect safety, aesthetic harmony and property values without prohibiting residents the full use and enjoyment of their homes. To grant antenna providers and individual tenants rights superior to the land owners' interest in safety, aesthetic harmony and property values would step outside the reasonable relationship between the government's legitimate interest and the effect of the regulation imposed. To the extent a property owner's property is devalued (albeit temporarily and/or partially) by such an overly intrusive rule, it can and will be argued convincingly that a taking has occurred.

Yours truly,



James R. Ayotte
Vice President